

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-209299

DATE: July 7, 1983

MATTER OF: Lanier Business Products, Inc.

DIGEST:

1. Protest is timely where protester could not have known from face of solicitation that agency would make award in violation of applicable procurement regulation; therefore, protester was not required to file protest prior to closing date for receipt of quotations.
2. Protest is timely, notwithstanding that GAO requested an additional, more detailed statement in support of the original protest, since original protest submission setting forth basic grounds for protest satisfied filing requirement of Bid Protest Procedures.
3. Agency procurement of central dictation system from supplier who held an optional use schedule contract was improper where agency's needs could be satisfied from supplier on a mandatory schedule.

Lanier Business Products, Inc., protests the award of Purchase Order No. 553-A2A028G to Dictaphone Corporation, to "furnish and install [a] Central Dictation System" by the Veterans Administration Medical Center, Allen Park, Michigan. Lanier contends that the award was made in violation of Federal Property Management Regulations (FPMR) which require the VA to purchase this equipment from mandatory Federal Supply Schedules (FSS). For the reasons that follow, we sustain the protest.

The VA issued request for quotations (RFQ) No. 553-136-82 seeking quotes on a "Central Dictation System" in accordance with VA specification X1710. It directed potential suppliers to submit quotations in accordance with a "current GSA Federal Supply Contract." Lanier submitted a quotation on its dictation equipment which was listed on a mandatory Group 74 FSS. The equipment

for which Dictaphone submitted its quotation was listed on optional use Groups 58 and 70 Automated Data and Telecommunications Service (ADTS) Schedules. The VA evaluated both systems and concluded that both "offer the features we need in a dictation system." The VA awarded the purchase order to Dictaphone because its system cost approximately \$16,000.00 less than Lanier's system. Dictaphone delivered the equipment the day the purchase order was issued; Lanier's protest followed.

Initially, Dictaphone argues that Lanier's protest should be dismissed as untimely. It contends that it was apparent from the face of the solicitation that the VA was not limiting itself to purchasing only those items listed on a Group 74 FSS contract, and that therefore Lanier should have filed its protest prior to the closing date for submission of quotations.

Alternatively, Dictaphone contends that Lanier's original protest letter to this Office did not adequately state the basis of its protest and Lanier did not file a satisfactory letter until more than 10 days after the purchase order award date, when Lanier learned the basis for its protest.

We find the protest to be timely.

First, although the RFQ did not specifically state that the VA was limiting itself to purchase from Group 74 FSS contracts, Lanier had the right to anticipate that the VA would comply with the applicable regulations with respect to purchasing from a mandatory schedule. Therefore, the basis for Lanier's protest arose when it learned of the award to Dictaphone.

Second, Lanier's initial protest submission, setting forth the basic grounds for protest, was sufficient to constitute the filing of a timely protest. The fact that, pursuant to our Bid Protest Procedures, we requested the submission of an additional statement in support of the initial protest within 5 days, see 4 C.F.R. § 21.1(d) (1983) (a request with which Lanier complied) does not negate the validity of the initial filing.

On the merits, Lanier contends that dictation equipment is listed on a Group 74 FSS, which is a mandatory schedule, and that therefore the VA was required to purchase its central dictation system from a firm with a contract on that schedule. Dictaphone's position is that the RFQ did not specifically limit potential suppliers to those with Group 74 FSS contracts, so that the VA's purchase from Dictaphone "is authorized and proper." The VA simply states that it is unable to determine which company's position is correct.

We believe it is clear that under the applicable regulations the VA had to utilize the mandatory FSS. FPMR § 101-26.401, 41 C.F.R. § 101-26.401, directs all executive agencies to procure needed articles from FSS contracts in accordance with the provisions of the appropriate FSS. Subsection 401-1 provides that "FSS are mandatory to the extent specified in each schedule." In relevant part, the FSS covering dictation equipment (Group 74, Class 7450) lists as mandatory users, "all departments and independent establishments * * * in the executive branch of the Federal Government * * *." Construing these regulations, we have held in numerous decisions that where there is a mandatory FSS in effect an agency is required to purchase its requirements from that schedule if its minimum needs will be met by the equipment listed on the schedule. Dictaphone Corporation, B-192305, December 22, 1978, 78-2 CPD 431; see McClane Enterprises --Reconsideration, B-192242, July 9, 1979, 79-2 CPD 15.

Here, the record shows that the VA was well aware that there was a mandatory FSS covering the types of dictation equipment it needed. The VA also concedes that the Lanier equipment, offered under its FSS contract, would satisfy the VA's minimum needs. Since Lanier was the only firm to respond to the RFQ that held a current Group 74 FSS contract, the VA was obligated to purchase its requirements from Lanier in the absence of circumstances justifying deviation from the regulatory provisions. No such justification has been presented here.

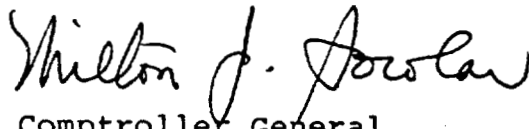
Dictaphone contends that an agency is free to choose items from any schedule so long as these items satisfy the agency's minimum needs. FPMR § 101-26.107, however,

establishes priorities for an agency's use of GSA supply sources. In pertinent part, the regulation provides that:

"Executive agencies shall satisfy requirements for supplies * * * from or through the sources * * * listed below in descending order as indicated: * * * (vi) Mandatory Federal Supply Schedules; (vii) Optional use Federal Supply Schedules * * *."

Obviously, if an agency's needs can be satisfied under a mandatory FSS contract, the agency is not free to go to an optional use schedule.

The protest is sustained. However, since the equipment has been delivered and is in use, we cannot recommend remedial action. By letter of today, we are informing the Administrator of Veterans Affairs of our conclusion.

for 
Comptroller General
of the United States